

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division



IN RE:) Case No. 01-32984
) Chapter 7
Ned W. Horne)
)
Debtor.)

JUDGEMENT ENTERED ON MAR 22 2002

ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTION

This matter came before the Court for hearing on March 14, 2002 upon Trustee's objection to exemptions. At this hearing, Debtor was represented by attorney Frank Hancock. Langdon Cooper, the chapter 7 Trustee, was present on his own behalf.

Based upon the record and hearing in this matter, this Court finds as follows:

1. Debtor filed a voluntary chapter 7 petition in this Court on October 17, 2001.

2. Trustee filed an objection to Debtor's claims and exemptions on February 26, 2002.

3. The exemption at issue here is a Met Life Insurance Policy in the amount of \$3,454.61. During the month prior to filing this bankruptcy, Debtor changed the beneficiaries on the life insurance policy in order to claim an exemption.

4. Debtor did not disclose this information in his schedules. The Trustee inquired about the insurance policy at the 341 first meeting of creditors, at which time Debtor informed him of the change in beneficiaries.

5. This failure by the Debtor to disclose appears to be inadvertent, not willful.

The Trustee objects to the exemption stating it was not voluntarily disclosed and is improper pre-bankruptcy planning. The Debtor argues that this pre-bankruptcy planning is proper as supported by long-standing case law, and his exemption should stand.

CONCLUSIONS OF LAW

Pre-bankruptcy planning is a well known conundrum in bankruptcy law and is one of degree. Case law on the subject warrants looking at each set of facts on a case by case basis. An often quoted quip from a 1981 case which is commonly referred to as the "pig rule" says that pre-bankruptcy planning is based on the principle of too much, "when a pig becomes a hog it is slaughtered." *In re Zouhar*, 10 B.R. 155, 157 (Bankr. D.N.M. 1981). Only when taken to excess is such planning improper.

Pre-bankruptcy planning is not in itself improper and in fact was intended by Congress. The practice is not fraudulent to creditors and permits the debtor to make full use of the exemptions to which he is entitled under the law. See *Ford v. Poston*, 773 F.2d 52, 54 (4th Cir. 1985) citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 361 (1977).

Mere conversion of property from non-exempt to exempt on the eve of bankruptcy--even though the purpose is to shield the asset

from creditors--is not enough to show fraud. See *Ford v. Poston*, 773 F.2d 52, 54 (4th Cir. 1985). Fraud must be present in order to make pre-bankruptcy planning improper. See *Id.* at 52.

Furthermore, exemptions are to be liberally construed in favor of the debtor under longstanding North Carolina case law, and debtors are permitted to amend exemptions without restriction. See *In re Berry*, 33 B.R. 351 (Bankr. W.D.N.C. 1983); *In re Laughinghouse*, 44 B.R. 789, 791 (Bankr. E.D.N.C. 1984); *In re Ragan*, 64 B.R. 384 (Bankr. E.D.N.C. 1986); *In re Hollar*, 184 B.R. 25 (Bankr. M.D.N.C. 1995).

In the case at hand, Debtor secured \$3,454.61 in exemptions with a Met Life Insurance Policy. He then amended his schedule C on two occasions, the last of which he reclaimed the life insurance policy.

The fact that Debtor failed to disclose this information on the insurance policy in his bankruptcy petition is problematic. Failure to disclose in the bankruptcy petition can be grounds for denial of a discharge and/or denial of exemptions. However, the undersigned finds this failure to disclose was inadvertent and not a willful attempt to defraud Debtor's creditors. Taking the case as the Court must--on a case-by-case basis--this particular failure to disclose was harmless and does not merit denial of an exemption.


In light of the applicable law and the fact that this exemption is more of a pig than a hog, this Court finds debtor's pre-bankruptcy planning and amendments to his Schedule C proper.

It is hereby ORDERED:

The Trustee's objection to exemptions is OVERRULED.

SO ORDERED.

This the 21st day of March, 2002.


U.S. Bankruptcy Judge